

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES WHITE, #177157,

Petitioner,

Case No. 18-cv-12325
Hon. Matthew F. Leitman

v.

JACK KOWALSKI,

Respondent.

**OPINION AND ORDER DENYING THE PETITION FOR A WRIT OF
HABEAS CORPUS (ECF No. 1), DENYING THE MOTION FOR A FREE
COPY OF THE RULE 5 MATERIALS (ECF No. 19), DENYING A
CERTIFICATE OF APPEALABILITY, AND DENYING LEAVE TO
PROCEED IN FORMA PAUPERIS ON APPEAL**

I

In 1984, Michigan prisoner Charles White (“Petitioner”) was convicted of first-degree criminal sexual conduct in the Oakland County Circuit Court and sentenced to four concurrent terms of four to forty years imprisonment. (*See* Offender Profile, Michigan Department of Corrections Offender Tracking Information System (“OTIS”), <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=177157>.) In 1990, Petitioner was convicted of prison escape in the Wayne County Circuit Court. (*See id.*) He was sentenced to one to five years imprisonment – later amended to one year and one day – to be served consecutively

to his other sentences. (*See id.*; Ltr. from Wayne Co. Cir. Ct. Chief Judge Colombo, ECF No. 1, PageID.16–18.)

On July 24, 2018, Petitioner brought this habeas case pursuant to 28 U.S.C. § 2254. In his pleadings, Petitioner raises claims about how his sentences have been calculated. (*See* Pet., ECF No. 1.) Respondent has filed an answer to the petition contending that it should be denied on exhaustion grounds and for lack of merit. (*See* Answer, ECF No. 12.) Petitioner has filed a reply to that answer, as well as a motion for a free copy of the Rule 5 materials submitted by Respondent. (*See* Reply, ECF No. 14; Request to Receive Rule 5 Materials, ECF No. 19.)

For the reasons set forth below, the Court **DENIES** the petition for a writ of habeas corpus (ECF No. 1), and the Court **DENIES** Petitioner’s motion for a copy of the Rule 5 materials (ECF No. 19). The Court also **DENIES** Petitioner a certificate of appealability and **DENIES** Petitioner leave to proceed in forma pauperis on appeal.

II

The petition must be dismissed because Petitioner has not fully exhausted his claims in the state courts.

A prisoner filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254 must first exhaust all state remedies. *See* 28 U.S.C. § 2254(c); *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (“[S]tate prisoners must give the state courts one

full fair opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process.”); *Williams v. Mitchell*, 792 F.3d 606, 613 (6th Cir. 2015). To satisfy the exhaustion requirement, a Michigan prisoner must present each issue to both the Michigan Court of Appeals and the Michigan Supreme Court. *See Smith v. Stephenson*, No. 16-cv-12241, 2016 WL 3418553, at *1 (E.D. Mich. June 22, 2016); *see also Hafley v. Sowders*, 902 F.2d 480, 483 (6th Cir. 1990). The claims must be “fairly presented” to those courts, meaning that the petitioner must have asserted both the factual and the legal bases for the claims. *Hand v. Houk*, 871 F.3d 390, 418 (6th Cir. 2017) (citing *McMeans v. Brigano*, 228 F.3d 674, 681 (6th Cir. 2000)). The petitioner must also present the claims to the state courts as federal constitutional issues. *Hruby v. Wilson*, 494 F. App’x 514, 517 (6th Cir. 2012). The burden is on the petitioner to prove exhaustion. *Nali v. Phillips*, 681 F.3d 837, 852 (6th Cir. 2012).

Petitioner makes no such showing. Petitioner filed a state habeas petition in 2003 alleging that his sentences were miscalculated. (*See* Pet., ECF No. 1, PageID.4.) It does not appear that he presented his claim as a federal constitutional issue. (*See id.*; Opinion and Order Denying State Habeas Petition, ECF No. 1, PageID.13–15.) And even if he presented a federal constitutional claim to the state trial court, there is no indication that Petitioner satisfied the exhaustion requirement by presenting the claim to the Michigan Court of Appeals. The petition does not

mention a state court appeal. (*See id.* at PageID.1–7.) And there is no other evidence in the record suggesting that Petitioner presented his claim to a Michigan appellate court. His claims are thus unexhausted.

Therefore, the Court **DENIES** and **DISMISSES WITHOUT PREJUDICE** the petition for a writ of habeas corpus (ECF No. 1). Given this determination, the Court **DENIES** Petitioner’s motion for a free copy of the Rule 5 materials (ECF No. 19).

III

Before Petitioner may appeal the Court’s decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added). Petitioner fails to make a substantial showing that a reasonable jurist would

debate the Court's procedural ruling that Petitioner failed to exhaust his constitutional claim. Accordingly, the Court **DENIES** a certificate of appealability.

Last, the Court **DENIES** Petitioner leave to proceed in forma pauperis on appeal as an appeal cannot be taken in good faith. *See* Fed. R. App. P. 24(a).

IV

Accordingly, for the reasons explained above, the Court hereby orders that:

- The petition for a writ of habeas corpus is **DENIED** and **DISMISSED WITHOUT PREJUDICE** (ECF No. 1).
- Petitioner's motion for a copy of the Rule 5 materials is **DENIED** (ECF No. 19).
- Petitioner is **DENIED** a certificate of appealability.
- Petitioner is **DENIED** leave to proceed in forma pauperis on appeal.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: January 6, 2020

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 6, 2020, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
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